



Central Services Division

NOTICE TO BIDDERS
PROPOSAL AND CONTRACT
SPECIAL PROVISIONS
FOR

**The City of Lincoln's Utility Rates for
Wastewater, Solid Waste and Storm Water
RFP 06152017**

Release Date: June 20, 2017

Submittal Deadline: July 20, 2017

1.0 Introduction

1.1 *Proposed Solicitation*

The City of Lincoln, hereinafter referred to as the “City”, is soliciting proposals for a firm to perform a Utility Rate Study for the City’s Wastewater, Solid Waste, and Storm Water utilities. Qualified firms, hereafter referred to as “consultant(s)” that meet the requirements set forth in this Request for Proposal are encouraged to participate.

1.2 *General Information about the City*

The City of Lincoln is located in Placer County, California. It is the northernmost of the South Placer County communities. It lies between Interstate 80 and Marysville along State Route 65, in the California foothill region.

The City was first incorporated in 1890. It has a five-member council and a City Manager. The five members of the City Council are elected at-large. They serve staggered four-year terms, with the Mayor being rotated annually among the Councilmembers. The Council meets on the second and fourth Tuesday of each month.

The consultant’s principal contact with the City will be **John Lee**, or a designated representative, who will coordinate assistance to be provided by the City to the consultant. City Hall is located at 600 Sixth Street, Lincoln, California 95648. The general telephone number is (916) 434-2400.

2.0 Instructions

2.1 Purpose

The purpose of this Request for Proposal (RFP) is to provide interested consultants the necessary information for preparing proposals for a Utility Rate Study to update the City's Wastewater, Solid Waste rates and to develop Storm Water rates. It is the intent of the City to establish a one-time contract to run for one year. Said contract shall be renewable at the City's discretion each year thereafter up to a maximum of three years. Either party can cancel the contract for any reason with 60 days written notice.

2.2 Proposed Submission

Each proposal shall be delivered via US Mail, in person, or express courier to the attention of the City Clerk. Five (5) copies of the proposal shall be submitted for use by the RFP Team. The City Clerk shall receive proposals no later than Thursday July 20, 2017 at 2:00 PM. Submissions after this deadline will not be accepted. **Proposals will not be accepted by facsimile or electronic mail.**

Each proposal shall include a letter of transmittal, not to exceed one page in length, signed by an authorized representative of the consultant. The letter of transmittal must state the names of the individual(s) authorized to negotiate with the City and sign contracts on behalf of the consultant.

Submissions shall be submitted and labeled as follows:

City of Lincoln
Attn: City Clerk
600 Sixth Street
Lincoln, CA 95648

Re: RFP 06152017 Utility Rate Study

2.3 Questions Related to RFP

In order to avoid any potential confusion, and to minimize the burden on City staff, the City requires that all *procedural* questions relating to this RFP be directed to **John Lee** at John.Lee@lincolncalifornia.gov. Any consultants found to be soliciting other members of City staff or officials during this RFP process may be disqualified from any further consideration.

3.0 Conditions and Requirements

3.1 *Hard Prices*

Prices submitted by consultants will be firm prices, not subject to increases during the term of the contractual agreement arising with the City as a result of this proposal. Consultant proposed prices shall include any applicable state and federal tax. Consultants are to stipulate the expiration date of their pricing. The cost estimate shall be provided on a time and materials basis. All direct costs shall be billed at vendor invoice.

3.2 *Right to Contract for Selected Services*

The City reserves the right to contract for selected services relating to this proposal from any consultant, in part or in whole. The City may select several consultants to provide all necessary services.

3.3 *Evaluation Criteria*

The various significant factors that will be considered in the evaluation of proposals are summarized below. The City's final selection will not be dictated on any single factor including price. The relative importance of these factors involves judgement on the part of the City's RFP Team and will include both objective and subjective analysis. A consultant may be eliminated from consideration for failure to comply with any of the requirements, depending upon the critical nature of such requirements.

3.3.1 *Proper Submission and Completeness of RFP:* Receipt of complete proposal by the due date as outlined in the proposal schedule. **Late submissions or delivery via facsimile will not be considered.**

3.3.2 *Comprehensiveness of Services Provided:* The consultant must have the capability to meet the required service levels described in this RFP.

3.3.3 *Public Sector Experience & References:* The consultant's experience in providing services to the public sector will be assessed as well as client references. Consultant's previous experience with developing storm water utility rates will be considered during the evaluation.

3.3.4 *Charges for Services:* The amount of proposed charges will be assessed.

3.3.5 *Schedule:* Consultant's proposed schedule will be considered in the evaluation.

3.4 *Right to Request Additional Information*

During the evaluation process, the RFP Team and the City reserve the right, where it may serve the best interest of the City, to request additional information and clarification from consultants. At the discretion of the RFP Team and the City, consultants submitting proposals may be requested to make oral presentations as part of the evaluation process.

3.5 *Right to Reject Any or All Proposals*

The City reserves the right to reject any or all price proposals, to waive technicalities or formalities, and to accept any price proposal deemed in the best interest of the City. When two or more consultants are deemed equal; the City reserves the right to make the award to one of the two consultants.

3.6 *Contracts*

It is recognized that the formal basis of any agreement between the City and the consultant is a contract (see Attachment E Sample Contract) rather than a proposal. In submitting price proposals, consultants must indicate that they are prepared to complete a contract containing all the information submitted in their price proposal. The price proposal will become part of the contract between the City and the successful consultant. If the consultant has a specific contract that they wish to use, the consultant must submit a sample along with the RFP.

3.7 *Rights to Submitted Materials*

All proposals, inquiries, responses, or correspondence related to or in reference to this RFP, and all reports, charts, displays, schedules, exhibits, and other documentation submitted by the consultant will become property of the City and a matter of public record.

3.8 *Proposal Interpretations and Addenda*

Any changes to this RFP by the City will be sent to each consultant or individual to whom an RFP has been sent. Such changes become an integral part of the RFP for incorporation into any contract awarded pursuant to the RFP. Consultants are responsible for checking the City website for addenda.

3.9 *Insurance Requirements*

For the duration of the contract, the consultant must procure and maintain insurance against loss of property. The cost of such insurance is the consultant's responsibility.

3.10 *Additional Services*

The general service requirements describe the minimum work to be accomplished. Upon final selection of the consultant, the scope of service may be modified and refined during negotiations with the City.

3.11 *Undue Influence*

The consultant declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of the City in connection with the award or terms of the Agreement that will be executed as a result of this RFP, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of the City will receive compensation, directly or indirectly, from the consultant, or from any officer, employee or agent of the consultant, in connection with the award of the Agreement or any work to be conducted as a result of the RFP. Violation of this Section shall be a material breach of the Agreement/Contract entitling the City to any and all remedies by law or in equity.

3.12 *Non-Discrimination*

The City maintains various policies related to contractual service providers. Among these is an anti-discrimination policy, which requires that our contractors not discriminate in hiring on the basis of age, gender, race, religion, sexual orientation, or medical condition. Upon acceptance of a proposal, the City may request that the selected consultant sign a statement affirming their compliance with this policy.

3.13 *Sexual Harassment*

As a consultant with the City of Lincoln, you are expected to comply with the City's Sexual Harassment policy. Should you have any questions regarding this policy please contact John Lee, at John.Lee@lincolncal.gov.

4.0 Consultant Proposal Format

To assist the City in its evaluation of submitted proposals, it is **required** that each proposal adheres to the following format:

4.1 Letter of Transmittal

In the Letter of Transmittal, the consultant shall describe their understanding of the work to be performed and why the consultant is the best qualified to perform the services requested. This letter of transmittal must state the names of the individual(s) authorized to negotiate with the City and sign contracts on behalf of the consultant.

4.2 Table of Contents

Section 2 shall be a detailed "Table of Contents" and shall include an outline of the submittal, identified by sequential page number and by section reference number and section title as described herein.

4.3 Description of Analysis

Section 4 shall be entitled "Description of Analysis" and will describe the methodology that you will utilize to provide the analysis requested in this Request for Proposals, taking care to account for the possible changes in scope and methodology mentioned in the last paragraph under Scope of Services. A description of services for each required Task included in the required scope of work shall be provided. If there are tasks that are not included in the proposed Scope of Work that are required, please identify them as an alternative task with the cost to complete the task separated out as an alternative bid item.

4.4 Consultant Summary Sheet

Submit a completed Consultant Summary Sheet (see Appendix A).

4.5 Certification of Proposals

Submit a completed Certification of proposal to the City of Lincoln (see Appendix B).

4.6 Project Understanding

Please provide a summary of your understanding of the required project. Please provide information related to your proposed rate modelling process and provide a summary of your firm's experience and understanding related to the proposition 218 process.

Additionally, Respond to each of the minimum qualifications listed under section 3.3 of Evaluation Criteria. **This section shall only be four pages maximum.**

4.7 Summary of Charges

The proposal must include a summary of all charges for proposed services (see Appendix C). Consultant shall provide a cost break down for the total cost not to exceed identified provided by Consultant on the form included in Appendix C. The cost break down shall be by task identified in the Scope of Work included in Section 6. Both the projected hours by task per staff and the total cost by staff and per task shall be provided. Direct costs shall also be provided. Direct costs shall be billed at vendor invoice and no markup will be allowed.

4.8 Schedule

Consultant shall provide a schedule for completion of the required work. The schedule shall be shown by critical path and major milestone.

4.9 Consultant and Staff Profile

Experience: Describe the consultant's experience in providing services to the public sector, describe jobs of similar size. Provide three (3) references (See Appendix D) most comparable to the size and technical needs of the City of Lincoln and attach a list of all Cities that the consultant has provided similar work for. Include a brief description of the services provided, how long such services have been provided and a contact person and telephone number for each client described. Please provide a bio for each proposed staff member in this section and a full resume for each staff member in an appendix. **This section shall only be 5 pages.**

4.10 Example Contract

Appendix E contains a sample contract that will be used for this agreement. Please review the contract to insure your organization meets all the criteria needed for this project/service. If there are any exceptions to the contract it shall be noted in this section. **This section shall only be one page.**

5.0 Proposal Schedule

Event/Activity	Date
Distribution of RFP	June 15, 2017
Final Date to Submit Questions	July 6, 2017 at 5:00 PM
Final Date for Receipt of Proposals	July 20, 2017 at 2:00 PM
Evaluation & Review	July 20 to July 25
Consultants Notified of RFP Results	July 25, 2017
City Council Approval	August 22, 2017
Service Begins	August 23, 2017

- 5.1 *Distribution of RFP:*** June 15, 2017
- 5.2 *Final Date to Submit Questions:*** July 6, 2017 at 5:00PM
- 5.3 *Final Date for Receipt of Proposals:*** July 20, 2017 at 2:00PM
- 5.4 *Evaluation & Review:*** The RFP team will evaluate proposals July 20 to July 25.
- 5.5 *Notification to Consultants:*** The successful consultant will be notified by July 25, 2017
- 5.6 *City Council Approval:*** The contract will be submitted to the City Council for approval on Tuesday August 22, 2017
- 5.7 *Service Begins:*** Service will commence on August 23, 2017

6.0 Scope of Services

The Scope of Services involves all necessary analyses and documentation to perform a study of the City's utility rates and recommendation of a revised rate schedule. In general, the scope of work shall involve the following:

Data Collection and Development: The consultant shall work with the City departments to collect all available data and to develop additional data when required to fully support a comprehensive fee program.

Fee Calculation and Analysis: The consultant shall determine the City of Lincoln's wastewater rates, solid waste rates, and storm water rates, based on costs to provide ongoing operations and implementation of an adequate capital replacement program. The rate study should take into account the mandated programs and industry trends specific to the services being provided. In addition, the consultant will also propose a methodology for annual inflationary adjustments.

Rate Structure: Develop rate structures that conform to existing and anticipated statutory regulations for the City that are equitable and defensible. Create a model that easily supplies meaningful information to the public, Elected Officials, and Staff, where the inputs are comprehensive and transparent.

Draft Report: The consultant shall prepare and provide a report that documents the fee study results, including, but not limited to, a description of the overall methodology, findings, supporting justification, recommended utility rates and the calculations that provide the legal nexus between services provided and the benefits from those services.

Presentation of Materials: The consultant shall present information at briefing meetings with city staff at critical points in the preparation process. In addition, upon completion of the Draft Report, the consultant shall be prepared to present the study to the City Council and the residents in a public format. The presentation capabilities and public involvement processes proposed by the consultants is a key factor in determining the successful proposal.

Proposition 218 Process: The consultant will provide guidance and advice to the City staff to assure compliance with the Proposition 218 process. The consultants can propose the preparation and completion of the Proposition 218 process as a potential additional service to the City.

Final City Rate Presentation: A final study shall be provided and presented to the City Council in a Public Hearing. The successful consultant must be prepared throughout the analysis to (a) adjust its scope of work to account for possible changes in rate structures acceptable to the City; and (b) adjust its methodology to account for local conditions.

Subcontracting: None of the services covered by this Contract shall be subcontracted without the prior written consent of the City, which will not be unreasonably withheld. Consultant/Contractor shall be as fully responsible to the City for the negligent acts and omissions of its contractors and subcontractors, and of persons either directly or indirectly employed by them, as it is for the negligent acts and omissions of persons directly employed by Consultant/Contractor.

Appendix A

Consultant Summary Sheet

Consultant Name: _____

Consultant Parent or Ownership: _____

Consultant Address: _____

Consultant Telephone Number: _____ Fax Number: _____

Management person responsible for direct contact with the City and the services required for this Request for Proposal (RFP):

Name: _____

Title: _____

Telephone Number: _____

EMAIL Address: _____

Person Responsible for day-to-day servicing of the account:

Name: _____

Title: _____

Telephone Number: _____

EMAIL Address: _____

Appendix B

Certification of Proposal to the City of Lincoln

- I. The undersigned hereby submits its proposal and, by doing so, agrees to furnish services to the City in accordance with the Request for Price Proposal (RFP) and to be bound by the terms and conditions of the RFP.
- II. This consultant has carefully reviewed its proposal and understands and agrees that the City is not responsible for any errors or omissions on the part of the consultant and that the consultant is responsible for these.
- III. It is understood and agreed that the City reserves the right to accept or reject any or all proposals and to waive any informality or irregularity in any proposal received by the City.
- IV. The proposal includes all of the commentary, figures and data required by the Request for Price Proposal.
- V. This consultant has carefully read and understands all of the items contained in Section 3, Conditions and Requirements.

Name of Consultant: _____

By (Authorized Signature): _____ Date: _____

Name: _____

Title: _____

Address: _____

Telephone Number: _____ Fax Number: _____

EMAIL Address: _____

Appendix C

TIME AND MANNER OF PAYMENT

City shall compensate Contractor in accordance with the terms and conditions of this Proposal, as follows:

Rate Study Cost (includes all tasks listed in the specification): _____

Hourly Rate: _____

- A. Additional services recommended by Contractor or requested by City shall be estimated in writing by Contractor and approved in writing by the Owner prior to commencement of work.
- B. Billing for Basic Services shall be invoiced monthly for services performed.
- C. Billing for Additional Services shall be invoiced monthly, if applicable, in proportion to services performed.

Appendix D

References

Reference One:

Name/Contact Information

Phone Number:

Description of Services: _____

How long were services provided: _____

Reference Two:

Name/Contact Information

Phone Number:

Description of Services: _____

How long were services provided: _____

Reference Three:

Name/Contact Information

Phone Number:

Description of Services: _____

How long were services provided: _____

Appendix E

SAMPLE CONTRACT FOR SERVICES

THIS CONTRACT is made on October_____, 20____, by and between the CITY OF LINCOLN (“City”), and _____ (“Consultant/Contractor”).

WITNESSETH:

WHEREAS, the City proposes_____;

WHEREAS, the Consultant/Contractor has presented a proposal for such services to the City, dated _____, 20____, attached hereto and incorporated herein as **Exhibit A**, and is duly licensed, qualified and experienced to perform those services;

NOW, THEREFORE, the parties hereto mutually agree as follows:

1. SCOPE OF SERVICES:

Consultant/Contractor shall do all work, attend all meetings, produce all reports and carry out all activities necessary for the completion of the services described in **Exhibit A** (“Scope of Work”). This Contract and its exhibits shall be known as the “Contract Documents.” Terms set forth in any Contract Document shall be deemed to be incorporated in all Contract Documents as if set forth in full therein. In the event of conflict between terms contained in these Contract Documents, the more specific term shall control. If any portion of the Contract Documents shall be in conflict with any other portion, provisions contained in the Contract shall govern over conflicting provisions contained in the exhibits to the Contract.

Consultant/Contractor enters into this Contract as an independent contractor and not as an employee of the City. The Consultant/Contractor shall have no power or authority by this Contract to bind the City in any respect. Nothing in this Contract shall be construed to be inconsistent with this relationship or status. All employees, agents, contractors or subcontractors hired or retained by the Consultant/Contractor are employees, agents, contractors or subcontractors of the Consultant/Contractor and not of the City. The City shall not be obligated in any way to pay any wage claims or other claims made against Consultant/Contractor by any such employees, agents, contractors or subcontractors, or any other person resulting from performance of this Contract.

The Consultant/Contractor agrees it has satisfied itself by its own investigation and research regarding the conditions affecting the work to be done and labor and materials needed, and that its decision to execute this Contract is based on such independent investigation and research.

2. TERM OF CONTRACT:

The services of Consultant/Contractor are to commence upon execution of this Contract by the City, and shall be undertaken and completed in accordance with the Schedule of Performance, attached hereto and incorporated herein by this reference as **Exhibit B**.

Consultant/Contractor's failure to complete work in accordance with the Schedule of Performance may result in delayed compensation as described in Section 3.

The City Manager or his or her designee may, by written instrument signed by the Parties, extend the duration of this Contract for a period of 1 **OR** [a period equal to the original term of this Contract] in the manner provided in Section 5, provided that the extension does not require the payment of compensation in excess of the maximum compensation set forth in Section 3, Compensation.

3. COMPENSATION:

The Consultant/Contractor shall be paid monthly for the actual fees, costs and expenses but in no event shall total compensation exceed _____ (\$_____), without City's prior written approval. Account Code Number/Account Description for Scope of Work to be charged to: _____.

Said amount shall be paid upon submittal of a monthly billing showing completion of the tasks that month. Consultant/Contractor shall furnish City with invoices for all expenses as well as for all materials authorized by this Contract. The invoices shall be submitted with the monthly billings. If Consultant/Contractor's performance is not in conformity with the Schedule of Performance, payments may be delayed or denied, unless the Consultant/Contractor's failure to perform in conformity with the Schedule of Performance is a documented result of the City's failure to conform to the Schedule of Performance, or if the Schedule of Performance is extended pursuant to Section 5.

If the work is halted at the request of the City, compensation shall be based upon the proportion that the work performed bears to the total work required by this Contract, subject to Section 4.

4. TERMINATION:

A. This Contract may be terminated by either party, provided that the other party is given not less than **30** calendar days' written notice (delivered by certified mail, return receipt requested) of intent to terminate.

B. The City may temporarily suspend this Contract, at no additional cost to City, provided that the Consultant/Contractor is given written notice (delivered by certified mail, return receipt requested) of temporary suspension. If City gives such notice of temporary suspension, Consultant/Contractor shall immediately suspend its activities under this Contract.

C. Notwithstanding any provisions of this Contract, Consultant/Contractor shall not be relieved of liability to the City for damages sustained by the City by virtue of any breach of this Contract by Consultant/Contractor, and the City may withhold any payments due to Consultant/Contractor until such time as the exact amount of damages, if any, due the City from Consultant/Contractor is determined.

D. In the event of termination, the Consultant/Contractor shall be compensated as provided for in this Contract, except as provided in Section 4.C. Upon termination, the City shall be entitled to all work, including, but not limited to, appraisals, inventories, studies, analyses, drawings and data estimates performed to that date in accordance with Section 7 hereof.

5. AMENDMENTS, CHANGES OR MODIFICATIONS:

Amendments, changes or modifications in the terms of this Contract may be made at any time by mutual written agreement between the parties hereto and shall be signed by the persons authorized to bind the parties hereto.

6. EXTENSIONS OF TIME:

Consultant/Contractor may, for good cause, request extensions of time to perform the services required hereunder. Such extensions shall be authorized in advance by the City in writing and shall be incorporated in written amendments to this Contract or the attached Scope of Work in the manner provided in Section 5.

7. PROPERTY OF CITY:

A. It is mutually agreed that all materials prepared by the Consultant/Contractor under this Contract shall become the property of the City, and the Consultant/Contractor shall have no property right therein whatsoever. Immediately upon termination, the City shall be entitled to, and the Consultant/Contractor shall deliver to the City, all data, drawings, specifications, reports, estimates, summaries and other such materials as may have been prepared or accumulated to date by the Consultant/Contractor in performing this Contract which is not Consultant/Contractor's privileged information, as defined by law, or Consultant/Contractor's personnel information, along with all other property belonging exclusively to the City which is in the Consultant/Contractor's possession.

B. Additionally, it is agreed that the parties intend this to be a contract for services and each considers the products and results of the services to be rendered by Consultant/Contractor hereunder (the "Work") to be a work made for hire. Consultant/Contractor acknowledges and agrees that the Work (and all rights therein, including, without limitation, copyright) belongs to and shall be the sole and exclusive property of the City.

8. COMPLIANCE WITH LOCAL LAW:

A. Consultant/Contractor shall comply with all applicable laws, ordinances, and codes of federal, state and local governments, and shall commit no trespass on any public or private property in performing any of the work authorized by this Contract. It shall be City's responsibility to obtain all rights of way and easements to enable Consultant/Contractor to perform its services hereunder. Consultant/Contractor shall assist City in providing the same.

9. WARRANTIES AND RESPONSIBILITIES CONSULTANT -CONTRACTOR:

A. Consultant/Contractor agrees, represents and warrants to City that it has all licenses, permits, qualifications and approvals of whatever nature which are legally required for Consultant/Contractor to practice its profession and to properly provide the services set forth in **Exhibit A** in a manner which is consistent with the generally accepted standards of Consultant/Contractor's profession. Consultant/Contractor represents and warrants to City that Consultant/Contractor shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Contract any licenses, permits and approvals which are legally required for Consultant/Contractor to practice its profession at the time the services are performed.

B. Consultant/Contractor agrees and represents that the work performed under this Contract shall be in accordance with applicable federal, state and local law in accordance with Section 17.A hereof.

C. Consultant/Contractor shall designate a project manager who at all times shall represent the Consultant/Contractor before the City on all matters relating to this Contract. In the event that City, in its sole discretion, at any time during the term of this Contract, desires the removal of any person or persons assigned by Consultant/Contractor, including but not limited to the project manager, to perform services pursuant to this Contract, Consultant/Contractor shall remove any such person immediately upon receiving notice from City of the desire of City for the removal of such person or persons.

D. Except as set forth in **Exhibit D**, Consultant/Contractor shall, at its sole cost and expense, furnish all facilities, equipment, and other materials which may be required for furnishing services pursuant to this Agreement. City shall furnish to Consultant/Contractor only the facilities, equipment, and other materials listed in **Exhibit D** according to the terms and conditions set forth in **Exhibit D**.

E. Consultant/Contractor shall provide corrective services without charge to the City for services which fail to meet the above professional and legal standards and which are reported to Consultant/Contractor in writing within sixty (60) days of discovery. Should

Consultant/Contractor fail or refuse to perform promptly its obligations, the City may render or undertake performance thereof and the Consultant/Contractor shall be liable for any expenses thereby incurred.

10. SUBCONTRACTING:

None of the services covered by this Contract shall be subcontracted without the prior written consent of the City, which will not be unreasonably withheld. Consultant/Contractor shall be as fully responsible to the City for the negligent acts and omissions of its contractors and subcontractors, and of persons either directly or indirectly employed by them, as it is for the negligent acts and omissions of persons directly employed by Consultant/Contractor.

11. ASSIGNABILITY:

Consultant/Contractor shall not assign or transfer any interest in this Contract whether by assignment or novation, without the prior written consent of the City which will not be unreasonably withheld. However, claims for money due or to become due to Consultant/Contractor from the City under this Contract may be assigned to a financial institution or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer whether voluntary or involuntary shall be furnished promptly to the City.

12. INTEREST IN CONTRACT:

Consultant/Contractor covenants that neither it, nor any of its employees, agents, contractors, and sub-contractors has any interest, nor shall they acquire any interest, direct or indirect, in the subject of the Contract, nor any other interest which would conflict in any manner or degree with the performance of its services hereunder. Consultant/Contractor shall make all disclosures required by the City's conflict of interest code in accordance with the category designated by the City, unless the City Manager determines in writing that Consultant/Contractor's duties are more limited in scope than is warranted by the category designated by the City code and that a narrower disclosure category should apply. Consultant/Contractor also agrees to make disclosure in compliance with the City conflict of interest code if, at any time after the execution of this Contract, City determines and notifies Consultant/Contractor in writing that Consultant/Contractor's duties under this Contract warrant greater disclosure by Consultant/Contractor than was originally contemplated. Consultant/Contractor shall make disclosures in the time, place and manner set forth in the conflict of interest code and as directed by the City.

13. MATERIALS CONFIDENTIAL:

All of the materials prepared or assembled by Consultant/Contractor pursuant to performance of this Contract are confidential and Consultant/Contractor agrees that they shall not be made available to any individual or organization without the prior written approval of the City, except by court order.

14. LIABILITY OF CONSULTANT/CONTRACTOR-NEGLIGENCE:

Consultant/Contractor shall be responsible for performing the work under this Contract in a manner which is consistent with the generally-accepted standards of the Consultant/Contractor's profession and shall be liable for its own negligence and the negligent acts of its employees, agents, contractors and subcontractors. The City shall have no right of control over the manner in which the work is to be done but only as to its outcome, and shall not be charged with the responsibility of preventing risk to Consultant/Contractor or its employees, agents, contractors or subcontractors.

15. INDEMNITY AND LITIGATION COSTS:

Consultant/Contractor shall indemnify, defend, and hold harmless the City, its officers, officials, agents, and employees and volunteers from and against any and all claims, damages, demands, liability, costs, losses and expenses, including without limitation court costs and reasonable attorneys' fees, arising in any manner by reason of negligent acts or negligent failure to act, errors, omissions or willful misconduct incident to the performance of this Contract on the part of Consultant/Contractor except such loss or damage which was caused by the active negligence, *{only if contract involves design services in connection with a public works project - see Civil Code §2782(b), §2783}* sole negligence, or willful misconduct of the City. The provisions of this paragraph shall survive termination or suspension of this Contract.

16. CONSULTANT/CONTRACTOR TO PROVIDE INSURANCE:

A. Consultant/Contractor shall not commence any work before obtaining, and shall maintain in force at all times during the duration and performance of this Contract the policies of insurance specified in this Section. Such insurance must have the approval of the City as to limit, form, and amount, and shall be placed with insurers with a current A.M. Best's rating of no less than A:VII (or in the case of Worker's Compensation insurance, with the State Compensation Insurance Fund of California).

B. Prior to execution of this Contract and prior to commencement of any work, the Consultant/Contractor shall furnish the City with certificates of insurance and copies of original endorsements providing evidence of coverage for all policies required by the Contract. The endorsements shall be signed by a person authorized by the insurer to bind coverage on its behalf. The Consultant/Contractor agrees to furnish one copy of each required policy to the City, and additional copies as requested in writing, certified by an authorized representative of the insurer. The failure of Consultant/Contractor or of any of its contractors or subcontractors to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material breach of this Contract. Approval of the insurance by the City shall not relieve or decrease any liability of Consultant/Contractor.

C. In addition to any other remedy the City may have, if Consultant/Contractor fails to maintain the insurance coverage as required in this Section, the City may obtain such insurance coverage as is not being maintained, in form and amount substantially the same as is

required herein, and the City may deduct the cost of such insurance from any amounts due or which may become due Consultant/Contractor under this Contract.

D. No policy required by this Contract shall be endorsed to suspended, voided, canceled, terminated by either party, or reduced in coverage or in limits unless the Consultant/Contractor has provided thirty (30) days' prior written notice by certified mail, return receipt requested, to the City.

E. Any deductibles, aggregate limits, pending claims or lawsuits which may diminish the aggregate limits, or self-insured retentions, must be declared to, and approved by, the City.

F. Aggregate Limits/Impairment.

If any of the insurance coverage's required by this section contain annual aggregate limits, the Consultant/Contractor must give the City notice of any pending claim or lawsuit which may diminish the aggregate. The Consultant/Contractor must take steps to restore the impaired aggregates or provide replacement insurance protection. The City has the option to specify the minimum acceptable aggregate limit for each line of coverage required. No substantial reductions in scope of coverage which may affect City's protection are allowed without City's prior written consent.

G. The requirement as to types, limits, and the City's approval of insurance coverage to be maintained by Consultant/Contractor are not intended to, and shall not in any manner, limit or qualify the liabilities and obligations assumed by Consultant/Contractor under the Contract.

H. The Consultant/Contractor and its contractors and subcontractors shall, at their expense, maintain in effect at all times during the performance of work under the Contract not less than the following coverage and limits of insurance, which shall be maintained with insurers and under forms of policy satisfactory to the City. The maintenance by Consultant/Contractor and its contractors and subcontractors of the following coverage and limits of insurance is a material element of this Contract. The failure of Consultant/Contractor or of any of its contractors or subcontractors to maintain or renew coverage or to provide evidence of renewal may be treated by the City as a material breach of this Contract.

I. Worker's Compensation and Employer's Liability Insurance.

1. Worker's Compensation Insurance to protect the Consultant/Contractor, its contractors and subcontractors from all claims under Worker's Compensation and Employer's Liability Acts, including Longshoremen's and Harbor Worker's Act ("Acts"), if applicable. Such coverage shall be maintained, in type and amount, in strict compliance with all applicable state and federal statutes and regulations. The Consultant/Contractor shall execute a certificate of compliance with Labor Code Section 3700, on the form provided in the Contract Documents.

2. Consultant/Contractor shall provide a Waiver of Subrogation endorsement in favor of the City, its officers, officials, employees, agents and volunteers for losses arising from work performed by the Consultant/Contractor

J. Commercial General Liability Insurance

1. The insurance shall be provided on form CG0001, or its equivalent, and shall include coverage for claims for bodily injury or property damage arising out of premises/operations, products/completed operations, contractual liability, and sub-contractors work and personal and advertising injury resulting from actions, failures to act, or operations of the insured, or by its employees or agents, or by anyone directly or indirectly employed by the insured. The amount of insurance coverage shall not be less than \$1,000,000.00 per occurrence and \$2,000,000 general and products/completed operations aggregates.

2. The commercial general liability insurance shall also include the following:

a. Endorsement equivalent to CG 2010 1185 naming the City, its officers, officials, employees, agents, and volunteers as additional insured's. The endorsement shall contain no special limitations on the scope of protection afforded to the City, its officers, officials, employees or volunteers.

b. Endorsement stating insurance provided to the City shall be primary as respects the City, its officers, officials, employees and any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it, to the payment or satisfaction of any defense expenses, loss, or judgment.

c. Provision or endorsement stating that the Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

d. Provision or endorsement stating that any failure to comply with reporting or other provisions of the policies including breaches of representations shall not affect coverage provided to the City, its officers, officials, employees, or volunteers.

e. Provision or endorsement stating that such insurance, subject to all of its other terms and conditions, applies to the liability assumed by the Consultant/Contractor under the Contract, including, without limitation, set forth in Section 16, Indemnity and Litigation Costs.

K. Commercial Automobile Liability Insurance.

1. The commercial automobile liability insurance shall include, but shall not be limited to, protection against claims for death, bodily or personal injury, or property damage for owned, non-owned, and hired automobiles resulting from actions, failures to act, or operations of the insured, or by its employees or agents, or by anyone directly or indirectly employed by the insured. The amount of insurance coverage shall not be less than \$1,000,000.00 per occurrence.

2. The commercial automobile liability insurance shall include the same endorsements as required for Commercial General Liability Insurance (16.J.2 above.)

L. Professional Liability.

The Consultant/Contractor and its contractors and subcontractors shall secure and maintain in full force, during the term of this Contract and for five years thereafter, professional liability insurance policies appropriate to the respective professions and the work to be performed as specified in this Contract. The limits of such professional liability insurance coverage shall not be less than **\$1,000,000** per claim.

17. MISCELLANEOUS PROVISIONS:

Compliance With Laws. Consultant/Contractor shall keep itself fully informed of, shall observe and comply with, and shall cause any and all persons, firms or corporations employed by it or under its control to observe and comply with, applicable federal, state, county and municipal laws, ordinances, regulations, orders and decrees which in any manner affect those engaged or employed on the work described by this Contract or the materials used or which in any way affect the conduct of the work.

Non-Discrimination. Consultant/Contractor shall not engage in unlawful employment discrimination. Such unlawful employment discrimination includes, but is not limited to, employment discrimination based upon a person's race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, gender, citizenship, or sexual orientation. Consultant/Contractor shall comply with Section 122(a) of the State and Local Fiscal Assistance Act of 1972.

Inspection of Records. Consultant/Contractor shall maintain and make available for inspection by the City and its auditors accurate records of all of its costs, disbursements and receipts with respect to any work under this Contract. Such inspections may be made during regular office hours at any time until six (6) months after the final payments under this Contract are made to the Consultant/Contractor.

D. Entirety of Agreement. This Contract constitutes the entire agreement between the parties relative to the services specified herein and no modification hereof shall be effective unless and until such modification is evidenced by a writing signed by both parties to this Contract. There are no understandings, agreements, conditions, representations, warranties or promises, with respect to this Contract, except those contained in or referred to in the writing.

E. Notices. All notices that are required to be given by one party to the other under this Contract shall be in writing and shall be deemed to have been given if delivered personally or enclosed in a properly addressed envelope and deposited in a United States Post Office for delivery by registered or certified mail addressed to the parties at the following addresses:

CITY: City of Lincoln
 Attn: City Manager
 600 Sixth Street
 Lincoln, CA 95648

CONSULTANT/CONTRACTOR:

F. Governing Law. This Contract shall be interpreted and governed by the laws of the State of California.

G. Venue. Any action arising out of this Contract shall be brought in Placer County, California, regardless of where else venue may lie.

H. Attorneys' Fees. In any action brought by either party to enforce the terms of this Contract, each party shall be bear responsibility for its attorney's fees and all costs regardless of whether one party is determined to be the prevailing party.

I. Counterparts. The parties may execute this Contract in two or more counterparts, which shall, in the aggregate, be signed by all the parties, each counterpart shall be deemed an original instrument as against any party who has signed it.

J. Severability. If any term, provision, covenant, or condition of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the Contract shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.

NAME/COMPANY/ADDRESS

CITY OF LINCOLN,
a municipal corporation

(Authorized Signature)

City Manager

Print Name

Dated

ATTEST:

APPROVED AS TO FORM:

City Clerk

City Attorney

Dated

Dated

EXHIBIT A

SCOPE OF WORK

EXHIBIT B

SCHEDULE OF PERFORMANCE

EXHIBIT C

**CERTIFICATE OF COMPLIANCE WITH LABOR CODE § 3700
Labor Code § 1861**

I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract.

CONSULTANT/CONTRACTOR

By: _____
Title

Print Name

Date

EXHIBIT D

FACILITIES, EQUIPMENT, OTHER MATERIALS

Consultant/Contractor shall be responsible for providing all necessary facilities, equipment and personnel to undertake the necessary task(s) outlined in **Exhibit A**.